

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF MASSACHUSETTS

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JOHN HANCOCK LIFE INSURANCE  
COMPANY, JOHN HANCOCK  
VARIABLE LIFE INSURANCE  
COMPANY, and MANULIFE  
INSURANCE COMPANY (f/k/a  
INVESTORS PARTNER INSURANCE  
COMPANY),

Plaintiffs,

v.

ABBOTT LABORATORIES,

Defendant.

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CIVIL ACTION NO. 05-11150-DPW

**PLAINTIFFS' MOTION FOR LEAVE TO FILE  
SUR-REPLY IN OPPOSITION TO DEFENDANT'S  
MOTION TO STRIKE PRAYER FOR RESCISSION IN  
PLAINTIFFS' FIRST AMENDED SUPPLEMENTAL COMPLAINT**

Plaintiffs John Hancock Life Insurance Company, John Hancock Variable Life Insurance Company and Manulife Insurance Company (collectively, "John Hancock" or "Hancock") hereby move this Court for leave to file a brief Sur-Reply, not to exceed five (5) pages, in opposition to Defendant's Motion to Strike Prayer for Rescission in Plaintiffs' First Amended Supplemental Complaint (hereinafter, "Motion to Strike"). John Hancock respectfully submits that a brief Sur-Reply is justified because Abbott Laboratories ("Abbott") makes certain new arguments for the first time in its Reply that it filed on March 2, 2007, including the argument that Hancock is "judicially estopped" from seeking rescission of the Research Funding

Agreement as a remedy for Abbott's fraud and material breaches of that contract. John Hancock believes that its proposed Sur-Reply will assist the Court in addressing those arguments and Abbott's Motion to Strike on the merits. John Hancock further believes that, in light of the length of Abbott's Reply brief, it would be both appropriate and equitable to allow Hancock a comparable opportunity to address the issues raised by the Abbott's Motion to Strike.<sup>1</sup>

**WHEREFORE**, John Hancock respectfully requests that it be granted leave to submit a Sur-Reply in Opposition to Defendant's Motion to Strike Prayer for Rescission in Plaintiffs' First Amended Supplemental Complaint, containing no more than five (5) pages of text, to be filed within three (3) business days of the Court's Order granting this Motion.

Respectfully submitted,

JOHN HANCOCK LIFE INSURANCE  
COMPANY, JOHN HANCOCK VARIABLE  
LIFE INSURANCE COMPANY and  
MANULIFE INSURANCE COMPANY

By their attorneys,

/s/ Karen Collari Troake

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Date: March 6, 2007

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<sup>1</sup> Defendant's Reply, filed on March 2, 2007, contains 16 pages of argument, almost the same number of pages as Abbott's original Memorandum in Support of its Motion to Strike.

**LOCAL RULE 7.1 CERTIFICATION**

Pursuant to Local Rule 7.1(A)(2), the undersigned counsel for Plaintiffs hereby certifies that, on March 6, 2007, counsel for John Hancock conferred in good faith with counsel for Abbott in an effort to resolve or narrow the issues that are the subject of this Motion, but no agreement could be reached by the parties.

/s/ Karen Collari Troake

Karen Collari Troake

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic and overnight mail upon Peter E. Gelhaar, Esq., Donnelly, Conroy & Gelhaar, LLP, One Beacon Street, 33rd Floor, Boston, Massachusetts 02108, on this the 6<sup>th</sup> day of March, 2007.

/s/ Karen Collari Troake

Karen Collari Troake